Thus a tax is valid when laid on goods brought into the state for sale, though still in the original package,[1] on the proceeds of such sales,[2] on cars engaged in interstate commerce, even though temporarily within the state,[3] and on the gross receipts of a railroad when in the form of a property tax and in lieu of other taxes upon the same property.[4] But if the tax is in substance a privilege tax it is generally invalid. An apparent exception is where the tax is for the purpose of regulation as an exercise of the police power rather than for revenue. Within this class come inspection taxes,[5] and license taxes on peddlers.[6] The extent to which such regulation may be carried, however, is a question upon which the cases are in hopeless conflict. But if the tax is a privilege tax for the purposes of revenue, it is invalid, and the court will look to the substance of the tax no matter what may be its form. Thus a uniform line of cases has declared license taxes on salesmen inapplicable to those soliciting orders for interstate business.[7] Accordingly a federal circuit court has recently decided that where a New York company delivered goods in a New Jersey town in its own wagons kept there for the purpose, such wagons were not subject to a license tax imposed on all wagons used for the transportation of merchandise, since they were employed in interstate commerce. *Simpson-Crawford Co.* v. *Borough of Atlantic Highlands*, 158 Fed. 372 (Circ. Ct., D. N. J.). It is clear that the wagons would have been taxable as property, and it is submitted that the distinction between a property and a privilege tax is an unfortunate one. When the tax is solely upon the privilege of conducting an interstate business, or when, though general in terms, it applies to a business that in its nature can only be of an interstate character, it would seem clearly unconstitutional. But when, as in the present case, the tax is laid without discrimination on all who engage in a certain business, it is difficult to see any reason upon which to support the exemption of those who engage in an interstate business of that character from their fair share of the burden of taxation. Moreover it is doubtful whether the Commerce Clause was ever intended to thus limit the states in the exercise of the sovereign power of taxation. Not only would a uniform rule be just, but it would also be welcome because it would result in doing away to a large extent with the technical distinctions of the doctrine of the original package as applied to excise taxes. But though the recent decisions of the United States Supreme Court have maintained the principle of uniformity with regard to property taxes, they have refused to apply it with regard to privilege taxes, and the present case, if appealed, will doubtless be affirmed.

THE LIABILITY OF MARRIED WOMEN ON CONTRACTS OF SURETYSHIP. — On its adoption in some of the United States, the English chancery's conception of a married woman's separate estate — that to the extent of such estate she is like a single woman[1] — was changed somewhat, and the

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1 Hinson *v.* Lott, 8 Wall. (U. S.) 148.
2 Woodruff *v.* Parham, *Ibid.* 123.
3 Pullman's Co. *v.* Pennsylvania, 141 U. S. 18. See 20 HARV. L. REV. 138.
4 Maine *v.* Grand Trunk R. R. Co., 142 U. S. 217. See 20 HARV. L. REV. 503.
5 Neilson *v.* Garza, 2 Woods (U. S. C. C.) 287.
6 Emert *v.* Missouri, 156 U. S. 296.
7 Caldwell *v.* North Carolina, 187 U. S. 622; Rearick *v.* Pennsylvania, 203 U. S. 507.

1 Hulme *v.* Tenant, 1 Bro. Ch. 16. See Johnson *v.* Gallagher, 3 De G. F. & J. 494, 519.

separate fund was administered not as if she were completely emancipated in regard to it, but as if she were a ward of the court and the fund existed only for her actual benefit. Consequently it was early laid down that she was not liable on a contract of suretyship for her husband.[2] Some states, however, hold her liable in accord with the view prevailing in England.[3]

The first statutes in regard to married women, which as a general rule merely gave to her equitable separate property an existence at law,[4] were not held to alter her obligations in equity, and the same conflict continued as to her liability on contracts of suretyship.[5] Moreover statutes providing that she could contract "in reference to her separate property" were usually held not to change the extent of her existing liability in equity but to create similar rights on the legal side,[6] the same conflict in regard to contracts of suretyship persisting.[7] A recent Idaho case has followed the American rule, holding that a married woman cannot be liable at law as surety for a third person out of her legal separate estate under a statute permitting her to contract with reference thereto as if unmarried. *Bank of Commerce* v. *Baldwin*, 93 Pac. 504. The court sanctioned the view that she would be liable on contracts only when they were for her benefit. Between the extremes of these cases there stands an intermediate rule in many states, holding her liable on contracts in which she expressly binds her separate property as well as on contracts for her benefit. When merely a surety, therefore, she is liable if such a clause be inserted, either at law[8] or in equity,[9] depending on the statutes. This view has been criticized adversely, however, on the ground that it merely adds to the forms by which she may bind herself, with no commensurate increase of protection.[10] Other courts have made the question wholly one of actual intent, though her intention would rarely be other than to be bound in some way, and this must necessarily be out of her separate property.[11] The same conflict of opinion has also manifested itself in recent legislation. Some states have passed statutes making married women liable on all contracts, thus including those of suretyship.[12] Some deny her the capacity to be surety for her husband,[13] or to be surety in general,[14] and others merely give her a defense, and hold that she may under certain circumstances be estopped to assert coverture.[15]

Although the cases differ very greatly in detail as to contracts of suretyship not governed by express statute, the court's decision is usually made

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[2] Ewing *v.* Smith, 3 Desaus. (S. C.) 417.

[3] Heatley *v.* Thomas, 15 Ves. 596; Morell *v.* Cowan, 6 Ch. D. 166, reversed on another point, 7 Ch. D. 151; Bell *v.* Kellar, 13 B. Mon. (Ky.) 381; Frank *v.* Lilienfeld, 33 Grat. (Va.) 377.

[4] See Pippen *v.* Wesson, 74 N. C. 437, 443; Perkins *v.* Elliott, 23 N. J. Eq. 526, 533.

[5] Hershizer *v.* Florence, 39 Oh. St. 516 (holding her liable). *Cf.* Davies *v.* Jenkins, 6 Ch. D. 728. *Contra*, Perkins *v.* Elliott, *supra*.

[6] See Woolsey *v.* Brown, 74 N. Y. 82.

[7] Deering *v.* Boyle, 8 Kan. 525; Williamson *v.* Cline, 40 W. Va. 194. *Contra*, Ritter *v.* Bruss, 116 Wis. 55; Gwynn *v.* Gwynn, 31 S. C. 482.

[8] See Saratoga County Bank *v.* Pruyn, 90 N. Y. 250.

[9] Webster *v.* Helm, 93 Tenn. 322. See Yale *v.* Dederer, 22 N. Y. 450.

[10] See Todd *v.* Lee, 15 Wis. 365, 372. But see Nunn's Adm. *v.* Givhan's Adm., 45 Ala. 370, 375.

[11] Smith *v.* Bond, 56 Neb. 529.

[12] Major *v.* Holmes, 124 Mass. 108; Mayo *v.* Hutchinson, 57 Me. 546.

[13] Farmington Nat'l Bank *v.* Buzzell, 60 N. H. 189.

[14] Seigman *v.* Streeter, 64 N. J. L. 169.

[15] Perkins *v.* Rowland, 69 Ga. 661.

to turn on the meaning of the ambiguous phrase "in reference to her separate property" — a source of endless confusion. The difference in the cases, however technically expressed, really seems at bottom to rest on the recognition of the need, growing with changing conditions, of allowing married women greater capacity to engage in business, counteracted by the belief that they are likely to contract imprudently. As time goes on, however, the latter as an actual influence must decrease in importance. Therefore the view which holds her separate property liable on contracts of suretyship, even without the statute giving her general power to contract as if unmarried, seems the better one. It certainly is more practicable.

CONSTITUTIONAL PROVISIONS AGAINST COMPULSORY SELF-INCRIMINATION. The present common law privilege against self-incrimination may be traced to the protest against the procedure in the Star Chamber. That protest had gone no further than to insist that men should not be arraigned upon mere suspicion of crime and subjected, without formal charge and under oath, to interrogation directed to procure disclosure of their offenses. At this time prosecutions for political and religious offenses were exceptionally prominent even in the common law courts. The original basis of the objection to the inquisitorial procedure of the ecclesiastical courts and the Star Chamber seems to have been lost, and the courts of common law, before which no man could be tried without formal charge of a specific offense, created a privilege against self-incrimination.[1] This rule, protective of crime, has been so widely extended as almost, if not quite, to excuse either a witness or a party in any action, civil or criminal, from being compelled to testify or to do any other act which may even tend to show his guilt.[2] The framers of the Fifth Amendment, directly inspired it seems by an opposition then being waged against the inquisitorial procedure of the French courts,[3] provided that "no person shall be compelled in any criminal case to be a witness against himself." Similar prohibitions have been made in the constitutions of nearly all the states.

In framing rules of law, as for example in creating or extending the common law privilege against self-incrimination, courts, as well as legislatures, may with propriety be influenced by broad concepts of the scope of constitutional protection to personal liberty. But the true limits of such constitutional provisions are found only when the question arises as to whether or not the enactment of a coördinate department of government or a rule established by the courts exceeds the constitutional limitation upon legislative power. Here it must seem that a reasonable interpretation of the letter of the prohibitory clause can alone be the standard of judgment.[4] Though only a few types of statutes relating to the production of evidence have been submitted to this test, it appears to be agreed that the constitutional protection, like the common law privilege, extends to witnesses in criminal actions who are not parties defendant.[5] The prohibition is also held to protect parties and witnesses from statutory commands to produce

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[1] See 3 Wig., Ev., 3069; 15 HARV. L. REV. 610.
[2] *Cf.* Evans *v.* The State, 106 Ga. 519.
[3] See 3 Wig., Ev., 3090, n. 112.
[4] *Cf.* Thayer, Legal Essays, 1; 7 HARV. L. REV. 129.
[5] Counselman *v.* Hitchcock, 142 U. S. 547.